

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

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UNITED STATES OF AMERICA

v.

VLADISLAV KLYUSHIN  
Defendant

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CRIMINAL NO. 21-cr-10104-PBS

**REPLY IN FURTHER SUPPORT OF MOTION TO PRECLUDE TESTIMONY OF  
SURPRISE GOVERNMENT WITNESS OR FOR OTHER RELIEF**

The government’s scattershot opposition to our motion to preclude Aditi Shah’s surprise testimony is, self-evidently, a study in diversion. The only claim warranting discussion is the truism that the government’s witness list purported to “reserve[] the right to amend and/or supplement this list with reasonable notice to the defendant.” Dkt. 178 at 5 (citation and internal quotation marks admitted).

But there’s nothing “reasonable” about amending the list halfway through a two-week trial – after the defense has formed its strategy, presented an opening statement and questioned witnesses in justifiable reliance on the original list – the Fri. before a surprise witness’s proposed Mon. testimony. That’s especially so where, as here, the government has “known” that venue is an issue from the “get-go.” T. 4-85.<sup>1</sup> And even assuming reasonable notice, the Court has ample

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<sup>1</sup> Courts *do* reopen cases for the presentation of venue proof where the issue is uncontested, essentially to remedy technical oversights. *See* Dkt. 178 at 3-4. But venue *is* contested here, much as the government might wish it wasn’t. Try as it may, the government can’t just assume the dispute away. And the *Timothy Smith* cert grant belies the government’s cynical attempt to reduce this important constitutional guarantee to some footnote or afterthought. *See* Dkt. 178 at 4.

discretion to *deny* the proposed amendment, as the government itself pointedly concedes. *See* Dkt. 178 at 3 (citing *U.S. v. Cruz*, 156 F.3d 22, 30 (CA1 1998)).

If the defense puts on a case – and if any defense case challenges venue – the government may seek to call Ms. Shah as a rebuttal witness, as in the materially indistinguishable *Gasparik*.

Respectfully Submitted,  
Vladislav Klyushin,  
By His Attorney,

/s/ Maksim Nemtsev  
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Dated: February 5, 2023

**CERTIFICATE OF SERVICE**

I, Maksim Nemtsev, hereby certify that on this date, February 5, 2023, a copy of the foregoing documents has been served via Electronic Court Filing system on all registered participants.

/s/ Maksim Nemtsev  
Maksim Nemtsev, Esq.